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Bill C-332 and the Criminalization of Coercive Control

By: Jennifer Koshan

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On February 26, 2024, I appeared before the federal [Standing Committee on Justice and Human Rights \(JUST\)](#), which is currently studying [Bill C-332, An Act to amend the Criminal Code \(controlling or coercive conduct\)](#).

After hearing from a number of witnesses speaking in favour of, and cautioning against, the criminalization of coercive control (as well as taking positions in between), JUST begins its clause-by-clause study of the Bill today. This post sets out my prepared five-minute opening remarks to JUST, which were followed by a question and answer period. A recording of the hearing is available [here](#) and the minutes are available [here](#). In addition, I submitted a 10-page written brief to JUST with colleagues Janet Mosher, Shushanna Harris, and Wanda Wiegers that is available [here](#).

Thank you for the invitation to provide input on Bill C-332 and the creation of a potential offence of coercive control. I am speaking today on my own behalf, but I did file a [submission with the Department of Justice](#) for its study of this issue in October 2023 with three co-authors – Janet Mosher, Wanda Wiegers, and Shushanna Harris – and I am relying on that submission for my remarks today.

We argue that it is crucial for all actors in the legal system to gain a nuanced and contextual understanding of coercive control – to support risk assessment and safety planning, for example. This includes an intersectional analysis of how multiple systems of oppression interact to shape tactics and experiences of coercion and control. However, we do not support the criminalization of coercive control, either as a standalone offence as in Bill C-332, or within a broader offence of intimate partner violence. We have several concerns, three sets of which I'll highlight today.

Concerns About the Current Criminal Legal System's Response to Intimate Partner Violence

Our first set of concerns relates to how the criminal legal system currently responds to intimate partner violence. The current focus of criminal law is on incidents, for example, of assault, in which seriousness is often tied to physical injury. Embedding an understanding of coercive control, which focuses on patterns rather than incidents, poses significant challenges for police, prosecutors, and judges.

Legal actors may also fail to recognize the range of coercive and controlling tactics that are influenced by systemic racism, colonialism, and other systems of oppression. For example, immigration status can be used as a tool of abuse. But this type of harm will remain invisible unless a nuanced and intersectional understanding of coercive control is developed by actors in the criminal legal system (CLS).

The current treatment of intimate partner violence-related offences by criminal legal system actors raises concerns about their ability to gain this sort of nuanced understanding. For example, police continue to lay dual charges in intimate partner violence cases, with Black, racialized, and Indigenous women being disproportionately criminalized. Training and primary aggressor policies have not curbed this problem, as shown in [recent research by my colleague Patrina Duhaney](#), a Professor in the Faculty of Social Work at the University of Calgary.

These problems, and broader issues with systemic racism and colonialism, have led many women to turn away from the criminal legal system. As I argued before the JUST Committee in 2021, we can no longer call these “unintended consequences” because we know the likelihood that they will occur.

Concerns Regarding Coercive Control in the Family Law Realm

Our second set of concerns is with how coercive control is being addressed in the family law system. My colleagues and I are in the process of reviewing cases decided since the reforms to the *Divorce Act*, [RSC 1985, c 3 \(2nd Supp\)](#) came into effect in March 2021, and our early review of cases raises several issues.

Courts struggle to understand coercive control, and continue to approach allegations on an incident-focused basis. Like the criminal legal system, family courts also characterize intimate partner violence as “mutual” or reframe it as “high conflict” in ways that minimize the harms of the violence to women and children.

Family courts have also characterized women’s attempts to protect their children from violence as amounting to “coercive control.” Given the willingness of family courts to accept allegations of so-called parental alienation, this feeds into findings of coercive control against protective mothers, who risk being criminalized or facing adverse parenting outcomes.

These are examples of perpetrators manipulating the legal system against the real victims of coercive control. And unfortunately, courts are sometimes persuaded by such arguments, often because of the ongoing influence of myths and stereotypes about intimate partner violence and its victims – which is again of heightened concern for women experiencing intersecting inequalities. For example, women are often wrongly accused of making false allegations of intimate partner violence to gain a so-called upper hand in family law proceedings.

If coercive control were criminalized, yet difficult to prove, that would likely perpetuate these assumptions, which can work against women and children in parenting disputes and undermine their safety. We also note that the terminology around coercive control is different in the *Divorce Act* and Bill C-332, which will likely lead to interpretive challenges and confusion.

Concerns About Bill C-332 Specifically

This leads to our third set of concerns, which relate to the specifics of Bill C-332.

To begin, the [proposed provision](#) (a new s 264.01 of the *Criminal Code*, [RSC 1985, c C-46](#)) has no explicit connection to intimate partner violence. In addition, the prohibited conduct is not defined, and it is unclear how many repetitions of behaviour are required to satisfy the requirement of “repeatedly or continuously” engaging in coercive control. This vagueness is susceptible to misinterpretation by courts and manipulation by abusers.

We also share the concern of others that the focus on whether the accused’s conduct has a “significant impact” on the complainant in s 264.01(2) will lead to a heavy reliance on the testimony of survivors, which may result in re-traumatization through the criminal legal system.

Lastly, the “best interests” defence in s 264.01(5) is also open to manipulation by abusers and is capable of reinforcing myths and stereotypes about violence that is purportedly for the complainant’s own good, which may adversely impact disabled survivors in particular.

Conclusion

In conclusion, this matter has been before the JUST Committee before, and it issued a [detailed report](#) that called for an expert committee to examine the issue of criminalizing coercive control or intimate partner violence more broadly. That has still not occurred. I urge the Committee to heed the calls of many feminist experts who are urging caution and further study – including of intersecting legal systems where intimate partner violence and coercive control are addressed – before a decision is made on whether to criminalize coercive control.

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